

RECEIVED
U.S. DISTRICT COURT
CLERK'S OFFICE
APR 10 2000

1 Dr. Henry C. Ayoub, DCH
2 1537 Tonada Way
3 Las Vegas, NV 89117
(702) 233-4200
3 Plaintiff in Proper Person

Apr 10 11 58 AM '00

LANCE S. WILSON
CLERK
DEPUTY

4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 CV-S-00-0452-HDM-LRL
7 DR. HENRY C. AYOUB, DCH, an individual, }
8 Plaintiff, }
9 vs. }
10 COMMUNITY COLLEGE OF SOUTHERN }
11 NEVADA, a governmental agency of the State }
12 of Nevada; BOARD OF REGENTS, }
13 COMMUNITY COLLEGE OF SOUTHERN }
14 NEVADA, a governing body for Southern }
15 Nevada Community College; and UNIVERSITY }
16 AND COMMUNITY COLLEGE SYSTEM OF }
17 NEVADA, an agency of the State of Nevada, }
18 Defendants. }
19
20
21
22
23
24
25
26
27
28

COMPLAINT

DR. HENRY C. AYOUB, as a Plaintiff in Proper Person, hereby pleads and alleges for his Complaint against the above-named Defendants as follows:

A. Jurisdiction, Parties and Venue

1. Plaintiff invokes the jurisdiction of this Court on the grounds that this Complaint falls within the subject-matter jurisdiction of United States District courts by involving questions of federal law, specifically under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (the "ADA"), under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., under ERISA, 29 U.S.C. § 1140 et seq. and under the Federal Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. Jurisdiction is therefore proper under 28 U.S.C. §§ 451, 1331, 1337 and 1345.

2. This action is authorized and instituted pursuant to Section 107(a) of the ADA, 42 U.S.C. § 1277(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981(A). The employment practices

1 hereinafter alleged to be unlawful were committed in the County of Clark, State of Nevada, within
2 the District of Nevada.

3 3. This Court also holds jurisdiction over Plaintiff's claims existing pursuant to the
4 laws of the State of Nevada under the doctrine of Supplemental Jurisdiction, wherein ancillary
5 state claims may be heard in Federal courts when they arise from the same common nucleus of
6 operative facts.

7 4. Plaintiff is and was at all times connected to this Complaint a resident of the
8 County of Clark, State of Nevada.

9 5. Defendant COMMUNITY COLLEGE OF SOUTHERN NEVADA ("CCSN") is
10 and was at all times connected to this Complaint a public entity, operated by the State of Nevada
11 as a post-secondary educational institution.

12 6. Defendant BOARD OF REGENTS, COMMUNITY COLLEGE OF SOUTHERN
13 NEVADA, is and was at all times connected to this Complaint public entity of the State of
14 Nevada, with responsibility for the policies and practices of Defendant CCSN.

15 7. Defendant UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF
16 NEVADA is and was at all times connected to this Complaint a public entity of the State of
17 Nevada, found within the venue of this Court by virtue of its ownership and operation of several
18 institutions of post-secondary education in the County of Clark, State of Nevada, including
19 Defendant CCSN.

20 8. Venue in this District is proper because a Defendant herein can be found within
21 this district, as shown in the allegations of parties herein.

22 9. At all relevant times, Defendant CCSN has been a covered entity under Section
23 101(2) of the ADA, 42, U.S.C. § 12111.

24 10. Defendants collectively constitute an "employer" as defined in the ADEA, in 29
25 U.S.C. § 623. Pursuant to 29 U.S.C. § 626 and with respect to age discrimination which
26 Defendants have practiced against the Plaintiff, Plaintiff seeks to recover damages for loss of
27 earnings, liquidated damages, reinstatement, costs of suit and any attorneys fees which Plaintiff
28 may hereafter incur.

B. Surrounding Facts and Circumstances

11. Plaintiff repeats each and every allegation in the paragraphs above as if they were set forth in full .

12. Plaintiff was born on September 9, 1942.

13. From approximately mid-1979 to approximately February of 1995, Plaintiff was employed as a tenured professor with CCSN. From July 1, 1995 until the end of his employment with Defendants, Plaintiff was employed as a counselor with CCSN.

14. Plaintiff has at all times material hereto been qualified for his employment by Defendant CCSN, and there properly performed his employment duties.

15. In 1987 and while on a sabbatical doing research related to his employment, Plaintiff suffered spinal injuries in an automobile-related accident. On November 5, 1990 and while engaged within the course and scope of his employment with Defendant CCSN, Plaintiff was involved in an automobile collision, which exacerbated the original injury and resulted in his permanent and partial disability.

16. From the 1990 accident to the present, Plaintiff has required chiropractic care to manage pain from his disability.

17. On or about December 1993, Plaintiff informed Defendant CCSN of his disability and requested reasonable accommodations for the same pursuant to the ADA. These reasonable accommodations included but were not limited to a reduced-hour workweek, a flexible work schedule, limitations on the weights he would be required to lift in the course of discharging his duties, a hands-free telephone and ergonomically correct office furniture.

18. Defendant CCSN failed to respond to Plaintiff's request for reasonable accommodations pursuant to the ADA, and discriminated against him because of his disability by refusing to credit, towards Plaintiff's advancement on his salary schedule, certain University of Nevada courses Plaintiff had attended to further his professional qualifications.

19. On or about February 14, 1994, Plaintiff filed a confidential grievance statement regarding the above-described discrimination with Thomas Brown, ADA Coordinator for the Nevada Department of Business and Industry.

1 20. Plaintiff suffered an exacerbation of his work-related injuries in an automobile
2 accident in approximately January of 1995.

3 21. Plaintiff on April 1, 1999, requested a re-opening of his EICN claims because his
4 injuries had been exacerbated by the 1994 automobile accident.

5 22. As indicated in the facts above, Defendant CCSN received actual notice of
6 Plaintiff's injuries.

7 23. As indicated in the facts above, Defendant CCSN received actual notice of
8 Plaintiff's permanent partial disability.

9 24. In approximately December of 1994, certain employees, officials and/or
10 representatives of Defendant CCSN represented to Defendant that a new teaching facility was to
11 be built at the CCSN Henderson, Nevada campus, for the express purpose of supporting and
12 expanding Plaintiff's teaching program.

13 25. Defendant CCSN failed and refused to make reasonable accommodations for
14 Plaintiff's disability and Plaintiff therefore pursued a complaint against CCSN with the State of
15 Nevada, Department of Employment, Training and Rehabilitation, Equal Rights Commission.

16 26. By March of 1996, Defendant CCSN had offered a pretext transfer to the CCSN
17 Sahara campus, a location which had no enrollment in Plaintiff's teaching specialty and no
18 facilities appropriate to support Plaintiff's teaching specialty.

19 27. Plaintiff knew that Defendant CCSN had previously used such types of transfers to
20 arrange a situation wherein a lack of enrollment at the professor's new location would be used to
21 justify a later elimination of that professor's position. Such an arrangement, upon information and
22 belief, was and is the only way Defendant CCSN could defeat the tenure system and effectively
23 "fire" a tenured professor.

24 28. Plaintiff declined to place his employment in jeopardy and declined the pretext
25 offer of a transfer.

26 29. By March of 1996, Defendant CCSN, through its employees, officials, agents
27 and/or representatives, had pressured Plaintiff to either take a medical retirement or to resign.
28 When Plaintiff declined to either take a medical retirement or to resign, Defendant CCSN,

1 through its employees, official, agents and/or representatives, began speaking about unilaterally
2 terminating Plaintiff's employment.

3 30. Because of Plaintiff's disability and its inability or refusal to make reasonable
4 accommodations for Plaintiff's disability, Defendant CCSN re-assigned Plaintiff from his position
5 as a tenured professor to a position as a counselor, pursuant to a negotiated settlement agreement
6 which Plaintiff executed under duress on February 8, 1996 and which CCSN employee, official
7 and/or agent Richard Moore executed on March 15, 1996.

8 31. Pursuant to all agreements and understandings of the parties, Plaintiff was to retain
9 his tenured status despite the change in the nature of his duties with Defendant CCSN.

10 32. Defendant CCSN failed to fully honor the negotiated settlement agreement.

11 33. Defendant CCSN failed and refused to even provide an office and a computer for
12 Plaintiff to perform the duties of his new employment position.

13 34. In 1998, Plaintiff again requested reasonable accommodations to enable him to
14 continue functioning in his new employment position despite his disability. These reasonable
15 accommodations included a specially-designed chair which would enable him to sit for longer
16 periods despite the continual pain and discomfort associated with his spinal injuries.

17 35. In the fall of 1998, Plaintiff would have been fully able to perform all of his
18 employment duties if given the appropriate reasonable accommodations by Defendant CCSN, as
19 was required by the ADA.

20 36. Defendant CCSN failed and refused to honor Plaintiff's requests for reasonable
21 accommodations for his disability, despite CCSN's actual notice of Plaintiff's disability, which
22 prevented him from remaining in a sitting position in an ordinary chair for more than a few hours.
23 However, Plaintiff remained able to perform all required employment duties when he was able to
24 remain seated.

25 37. Throughout the times relevant to this Complaint, Defendant CCSN has violated
26 various federal statutes and rules of contract performance by its failure to make reasonable
27 accommodations in Plaintiff's work schedule, failure to make reasonable accommodations in
28 Plaintiff's physical environment (including but not limited to providing office furnishings which

1 would enhance Plaintiff's ability to remain on the job without experiencing debilitating pain),
2 refusal to provide office space, refusal to provide computer equipment, consistent obstruction of
3 Plaintiff's professional development, harassing him for making use of his accrued sick leave,
4 engaging in retaliatory conduct for Plaintiff's pursuit of grievances, failing to honor their
5 negotiated settlement agreement related to Plaintiff's discrimination grievance

6 38. Over the summer break of 1999, Plaintiff was on unpaid summer break leave and
7 was cut off from normal routes of communication with Defendant CCSN.

8 39. In September of 1999, Plaintiff informed Defendant CCSN that his physical
9 condition allowed him to work a schedule of only half-days. Defendant initially agreed to this
10 accommodation for his disability.

11 40. In September 1999, Plaintiff again asked Defendant CCSN for reasonable
12 accommodations for his disability, including an ergonomically correct chair, an office and a hands-
13 free telephone.

14 41. Defendants never responded to Plaintiff's communications for approximately five
15 months, contrary to internal policy and procedure.

16 42. Before the date of Plaintiff's last request for reasonable accommodations for his
17 disability, at least one other professor employed by Defendant CCSN was, upon information and
18 belief, allowed to work a half-days schedule while retaining full pay.

19 43. At a meeting on CCSN property on September 28, 1999, Plaintiff requested a 12-
20 month leave to allow his body to fully heal. Defendant CCSN advised Plaintiff to take an
21 extended sick leave pursuant to the Federal Family Medical Leave Act, but Plaintiff declined to
22 follow that suggestion, preferring to assert his rights as enumerated in his employment contract
23 with CCSN and as outlined in the CCSN policies and procedures.

24 44. Following the September 28, 1999, meeting, Defendant CCSN unilaterally
25 "placed" Plaintiff on extended sick leave pursuant to the Federal Family Medical Leave act, even
26 though Plaintiff had never submitted the required application for such leave, and in violation of
27 applicable federal law and CCSN internal policies and procedures.

28 45. Defendant CCSN at some presently unknown time in 1999 began to incorrectly

1 charge certain portions of Plaintiff's leave time against his accrued sick leave account, depleting
2 the number of days which Plaintiff had available for medical days off required by his disability.

3 46. Following the September 28, 1999 meeting, attorney Glenda White, in connection
4 with the Nevada Faculty Alliance, tried to represent Plaintiff in his dispute with CCSN.
5 Defendant CCSN, however, frustrated White's efforts by failing to fully respond to her requests
6 for critical documentation and by failing to follow internal procedures as required Board of
7 Regents and as required by Plaintiff's employment contract.

8 47. Plaintiff was constructively discharged from Defendant CCSN on March 2, 2000
9 (See Fourth Claim below) because of CCSN's repeated and persistent failures to make reasonable
10 accommodations for his disability, CCSN's repeated harassment of Plaintiff for using his accrued
11 sick leave and the intolerable working conditions he was forced to endure.

12 48. Following Plaintiff's constructive discharge, Defendant CCSN failed and refused
13 to pay Plaintiff for his accrued and unused sick leave, claiming that Plaintiff had used all of his
14 accrued sick leave.

15 49. Following Plaintiff's constructive discharge, Defendant CCSN continued to fail
16 and refuse to provide any documentation to Plaintiff which would account for how it calculated
17 its claim that Plaintiff had used all of his accrued sick leave.

18 50. Plaintiff has pursued his administrative remedies for his work-related injuries and
19 disability with EICN and exhausted them on March 9, 2000, when deputy Nevada Attorney for
20 Injured Workers Peter L. Busher, Esq., mailed Plaintiff a copy of the EICN Appeals Officer's
21 Decision and Order dated March 8, 2000.

22 51. Plaintiff has pursued his administrative remedies for disability and age
23 discrimination under NRS 613.330 and exhausted them.

24 52. Defendants BOARD OF REGENTS, COMMUNITY COLLEGE OF
25 SOUTHERN NEVADA and UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF
26 NEVADA are responsible for the actions of Defendant CCSN by virtue of their supervisory
27 authority over said Defendant and the doctrine of Respondeat Superior.

28

STATEMENT OF CLAIMS

FIRST CLAIM, EMPLOYMENT DISCRIMINATION UNDER THE ADA

53. Plaintiff repeats each and every allegation in the paragraphs above as if they were set forth in full in this Claim.

54. More than 30 days before the institution of this lawsuit, Plaintiff pursued appropriate administrative remedies, with the State of Nevada, Department of Employment, Training and Rehabilitation's Equal Rights Commission, for Defendants' violations of the ADA. All conditions precedent to the institution of this lawsuit have been fulfilled.

9 55. Since at least December of 1993, Defendant CCSN has engaged in unlawful
10 employment practices in violation of the ADA Sections 102(a), 102(b)(1) and 102(b)(5)(B) with
11 respect to Plaintiff's employment first as a tenured professor, then as a counselor. These include
12 but are not limited to failure to make reasonable accommodations in Plaintiff's work schedule,
13 failure to make reasonable accommodations in Plaintiff's physical environment (including but not
14 limited to providing office furnishings which would enhance Plaintiff's ability to remain on the job
15 without experiencing debilitating pain), refusal to provide office space, refusal to provide
16 computer equipment, consistent obstruction of Plaintiff's professional development, harassing him
17 for making use of his accrued sick leave, engaging in retaliatory conduct for Plaintiff's pursuit of
18 grievances, failing to honor their negotiated settlement agreement related to Plaintiff's earlier
19 discrimination grievance and ultimately, constructive discharge of Plaintiff.

20 56. Plaintiff was at all times and still is a qualified person with a disability pursuant to
21 the ADA, by reason of spinal injuries which limit his ability to remain seated for long periods of
22 time, which limit his ability to lift objects, and which limit his range of motion. Plaintiff was at all
23 times able to fulfil the essential functions of his position for short periods of time, but needed
24 reasonable accommodations to manage pain and prevent "flare-ups" of pain following his work
25 periods which would then prevent him from working on the following day. Reasonable
26 accommodations for Plaintiff's disability would have enabled him to fulfil the essential functions
27 of his position for longer periods of time each day, without leaving him with severe debilitating
28 pain on the following day.

1 57. The effect of the practices complained of above has been to deprive Plaintiff of his
2 equal employment opportunities and otherwise adversely affect his status as an employee with a
3 disability.

4 58. The unlawful employment practices complained of above were and are intentional.

5 59. As a direct and proximate result of Defendants' wrongful actions as described
6 above, Plaintiff has suffered damages in an amount to be proven at trial.

7 WHEREFORE, Plaintiff, HENRY C. AYOUB, prays that this Court:

8 A. Order Defendants to make Plaintiff whole by providing him with appropriate lost
9 earnings and the cash value of employee benefits of which he has been deprived since his
10 departure from employment, with pre-judgment interest.

11 B. Order Defendants to eradicate the effects of their unlawful employment practices,
12 including but not limited to reinstating Plaintiff to the position which he previously held as a
13 professor and restoring to him all of the privileges and benefits of his employment.

14 C. Order that the costs of maintaining this action, including reasonable attorney's fees
15 hereafter incurred, be awarded to Plaintiff.

16 D. Order Defendants to make Plaintiff whole by providing compensation for his other
17 pecuniary losses, including but not limited to cost incurred for health and life insurance premiums,
18 and costs of seeking new employment, in amounts to be proven at trial hereof.

19 E. Order such other and further relief as the Court deems just and proper.

20 **SECOND CLAIM, AGE DISCRIMINATION UNDER THE ADEA**

21 39. Plaintiff repeats each and every allegation in the paragraphs above as if they were
22 set forth in full in this Claim.

23 40. The Plaintiff learned, after his termination, that Defendant CCSN had filled the
24 position he formerly held with a person of a younger age.

25 41. The conduct of Defendant CCSN, by and through its officials, employees, servants
26 and/or agents, constitutes a willful violation of 29 U.S.C. § 623(a), inasmuch as the employment
27 decisions of Defendant CCSN concerning Plaintiff were based, in whole or in part, upon
28 Plaintiff's age.

1 42. On April 10, 2000, the Plaintiff complied with 29 U.S.C. § 626(d) by filing a
2 charge of age discrimination with the Nevada Equal Employment Opportunity Commission.

3 43. As a direct and proximate result of Defendants' wrongful actions as described
4 above, Plaintiff has suffered damages in an amount to be proven at trial.

5 WHEREFORE, Plaintiff, HENRY C. AYOUB, prays that this Court:

6 A. Order Defendants to make Plaintiff whole by providing him with appropriate lost
7 earnings and the cash value of employee benefits of which he has been deprived since his
8 departure from employment, with pre-judgment interest.

9 B. Order Defendants to eradicate the effects of their unlawful employment practices,
10 including but not limited to reinstating Plaintiff to the position which he previously held as a
11 professor and restore to him all of the privileges and benefits of his employment.

12 C. Award liquidated damages to the Plaintiff on account of the Defendants' willful
13 violations of 29 U.S.C. § 623(a).

14 D. Order that the costs of maintaining this action, including reasonable attorney's fees
15 hereafter incurred, be awarded to Plaintiff.

16 E. Order Defendants to make Plaintiff whole by providing compensation for his other
17 pecuniary losses, including but not limited to cost incurred for health and life insurance premiums,
18 and costs of seeking new employment, in amounts to be proven at trial hereof.

19 F. Order such other and further relief as the Court deems just and proper.

20 **THIRD CLAIM, PETITION FOR JUDICIAL REVIEW UNDER NRS 613.420**

21 **(Disability Discrimination Claim)**

22 65. Plaintiff repeats each and every allegation in the paragraphs above as if they were
23 set forth in full in this Claim.

24 66. Plaintiff hereby applies to this Court for an order granting or restoring to him the
25 rights to which he is entitled under of NRS 613.310 to 613.435, inclusive, pursuant to NRS
26 613.420 and this Court's Supplemental Jurisdiction as set forth above.

27 **(Age Discrimination Claim)**

28 67. Plaintiff hereby applies to this Court for an order granting or restoring to him the

1 rights to which he is entitled under of NRS 613.310 to 613.435, inclusive, pursuant to NRS
2 613.420 and this Court's supplemental jurisdiction as set forth above.

3 WHEREFORE, Plaintiff, HENRY C. AYOUB, prays that this Court hear this matter as allowed
4 pursuant to the Nevada Revised Statutes and pursuant to this Court's supplemental jurisdiction
5 under the Federal Rules of Civil Procedure.

6 **FOURTH CLAIM, CONSTRUCTIVE DISCHARGE**

7 68. Plaintiff repeats each and every allegation in the paragraphs above as if they were
8 set forth in full in this Claim.

9 69. The actions of Defendants and conditions under which Plaintiff was forced to work
10 were violative of Nevada's strong public policy in favor of protecting and providing for injured
11 workers.

12 70. A reasonable person in the Plaintiff's position at the time of resignation would
13 have also resigned because of the aggravated and intolerable employment actions and conditions.

14 71. Defendants had actual or constructive knowledge of the intolerable actions and
15 conditions and their impact on the Plaintiff.

16 72. The intolerable aspects of Plaintiff's employment situation could have been
17 remedied by Defendants.

18 73. Plaintiff did leave his employment because of the conditions described herein.

19 74. As a direct and proximate result of Defendants' actions which forced Plaintiff to
20 leave his employment, Plaintiff has suffered damages in amount to be proven at time of trial
21 hereof.

22 WHEREFORE, Plaintiff, HENRY C. AYOUB, prays that this Court:

23 A. Order Defendants to make Plaintiff whole by providing him with appropriate lost
24 earnings and the cash value of employee benefits of which he has been deprived since his
25 departure from employment, with pre-judgment interest.

26 B. Order Defendants to eradicate the effects of their unlawful employment practices,
27 including but not limited to reinstating Plaintiff to the position which he previously held as a
28 professor and restoring to him all of the privileges and benefits of his employment.

1 C. Order Defendants to make Plaintiff whole by providing compensation for his other
2 pecuniary losses, including but not limited to cost incurred for health and life insurance premiums,
3 and costs of seeking new employment, in amounts to be proven at trial hereof.

4 D. Order that the costs of maintaining this action, including reasonable attorney's fees
5 hereafter incurred, be awarded to Plaintiff.

6 E. Order such other and further relief as this Court may deem just and proper.

7 **FIFTH CLAIM, NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**

8 56. Plaintiff repeats each and every allegation in the paragraphs above as if they were
9 set forth in full in this Claim.

10 57. At all times relevant hereto, Defendants were bound by the common law and their
11 duty to exercise due care in their relations with Plaintiff.

12 58. Defendants breached their duties owed to Plaintiff and caused Plaintiff severe
13 emotional distress by consistently obstructing his professional development, harassing him for
14 making use of his accrued sick leave, repeatedly refusing to make reasonable accommodations for
15 his disability, engaging in retaliatory conduct for Plaintiff's pursuit of grievances and failing to
16 honor their negotiated settlement agreement related to Plaintiff's earlier discrimination grievance.

17 59. Defendants' conduct was extreme and outrageous, and carried a substantial
18 likelihood of causing Plaintiff severe emotional distress.

19 60. As a direct and proximate cause of Defendants' actions and failure to fulfill their
20 duties as set forth above, Plaintiff has suffered mental anguish, anxiety, and severe emotional and
21 physical distress.

22 WHEREFORE, Plaintiff, HENRY C. AYOUB, prays that this Court:

23 A. Order Defendants to pay damages to Plaintiff, in an amount to be proven at trial of
24 this Claim.

25 B. Order that the costs of maintaining this action, including reasonable attorney's fees
26 hereafter incurred, be awarded to Plaintiff.

27 C. Order such other and further relief as this Court may deem just and proper.

28

1 SIXTH CLAIM, CONVERSION RE: ACCRUED SICK LEAVE FUNDS

2 61. Plaintiff repeats each and every allegation in the paragraphs above as if they were
3 set forth in full in this Claim.

4 62. Plaintiff's accrued sick leave represented a protectable property interest with a
5 value that could be reduced to a medium of exchange such as a monetary sum.

6 63. By refusing to recognize Plaintiff's leave of absence and wrongfully applying his
7 accrued sick leave to those periods, Defendants exercised and are exercising dominion and control
8 over the property of another, to wit, Plaintiff, in a manner that is inconsistent with the rights of
9 Plaintiff, and therefore constitutes conversion of the accrued sick leave under Nevada law.

10 64. As a direct and proximate result of Defendant's conversion of Plaintiff's accrued
11 sick leave, Plaintiff has suffered damages in an amount to be proven at trial.

12 WHEREFORE, Plaintiff, HENRY C. AYOUB, prays that this Court:

13 A. Order Defendants to pay damages to Plaintiff, in an amount to be proven at trial of
14 this Claim.

15 B. Order that the costs of maintaining this action, including reasonable attorney's fees
16 hereafter incurred, be awarded to Plaintiff.

17 C. Order such other and further relief as this Court may deem just and proper.

18 SEVENTH CLAIM, VIOLATION OF ERISA

19 63. Plaintiff repeats each and every allegation in the paragraphs above as if they were
20 set forth in full in this Claim.

21 64. Defendants violated § 510 of ERISA, 29 U.S.C. § 1140, in that one of the
22 determining factors of Defendants' decision to discharge Plaintiff was to prevent the vesting of his
23 pension rights with Defendants and to deny him continued provision of full medical coverage
24 throughout his disability.

25 65. As a direct and proximate result of Defendants' wrongful actions as described
26 above, Plaintiff has suffered damages in an amount to be proven at trial.

27 WHEREFORE, Plaintiff, HENRY C. AYOUB, prays that this Court:

28 A. Order Defendants to make Plaintiff whole by providing him with appropriate lost

1 earnings and the cash value of employee benefits of which he has been deprived since his
2 departure from employment, with pre-judgment interest.

3 B. Order Defendants to eradicate the effects of their unlawful employment practices,
4 including but not limited to reinstating Plaintiff to the position which he previously held as a
5 professor and restoring to him all of the privileges and benefits of his employment.

6 C. Order Defendants to make Plaintiff whole by providing compensation for his other
7 pecuniary losses, including but not limited to cost incurred for health and life insurance premiums,
8 and costs of seeking new employment, in amounts to be proven at trial hereof.

9 D. Order that the costs of maintaining this action, including reasonable attorney's fees
10 hereafter incurred, be awarded to Plaintiff.

11 E. Order such other and further relief as this Court may deem just and proper.

12 **SEVENTH CLAIM, VIOLATION OF THE FEDERAL REHABILITATION ACT**

13 57. Plaintiff repeats each and every allegation in the paragraphs above as if they were
14 set forth in full in this Claim.

15 58. Section 504 of the Federal Rehabilitation Act of 1973, 29 U.S.C. § 794, provides
16 that no otherwise qualified handicapped person "shall, solely by reason of his or her handicap, be
17 excluded from the participation in, be denied the benefits of, or be subjected to discrimination
18 under any program or activity receiving Federal Financial assistance. . . ."

19 59. Plaintiff should be considered by Defendants as a handicapped person within the
20 meaning of Section 504 of the Rehabilitation Act. Plaintiff was and is qualified to receive
21 reasonable accommodations by reason of his disability.

22 60. Defendants have violated Plaintiff's rights under the Rehabilitation Act by refusing
23 him reasonable accommodations, which would enable him to perform the functions of his
24 position, based solely upon his handicap status.

25 61. As a direct and proximate result of Defendants' wrongful actions as described
26 above, Plaintiff has suffered damages in an amount to be proven at trial.

27 WHEREFORE, Plaintiff, HENRY C. AYOUB, prays that this Court:

28 A. Order Defendants to make Plaintiff whole by providing him with appropriate lost

1 earnings and the cash value of employee benefits of which he has been deprived since his
2 departure from employment, with pre-judgment interest.

3 B. Order Defendants to eradicate the effects of their unlawful employment practices,
4 including but not limited to reinstating Plaintiff to the position which he previously held as a
5 professor and restoring to him all of the privileges and benefits of his employment.

6 C. Order Defendants to make Plaintiff whole by providing compensation for his other
7 pecuniary losses, including but not limited to cost incurred for health and life insurance premiums,
8 and costs of seeking new employment, in amounts to be proven at trial hereof.

9 D. Order that the costs of maintaining this action, including reasonable attorney's fees
10 hereafter incurred, be awarded to Plaintiff.

11 E. Order such other and further relief as this Court may deem just and proper.

12 **EIGHTH CLAIM, BREACH OF THE IMPLIED COVENANT**

13 **OF GOOD FAITH AND FAIR DEALING**

14 61. Plaintiff repeats each and every allegation in the paragraphs above as if they were
15 set forth in full in this Claim.

16 62. Plaintiff's employment with Defendants was at all relevant times pursuant to a
17 valid and enforceable contract.

18 63. Every contract under Nevada law carries an implied covenant of good faith and
19 fair dealing.

20 64. In the employment context, Nevada law further requires a special relationship,
21 such as one of trust and special reliance, to support a claim of breach of the implied covenant of
22 good faith and fair dealing.

23 65. In the employment context, Nevada law further requires that the employer's
24 conduct to go well beyond the bounds of ordinary liability for breach of contract, to support a
25 claim of breach of the implied covenant of good faith and fair dealing.

26 66. A special relationship arose between Plaintiff and Defendant CCSN by virtue of
27 their longstanding employer-employee relationship, as well as other factors.

28 67. The Defendants breached their covenant of good faith and fair dealing by

1 repeatedly failing and refusing to follow its own internal policies and procedures in their dealings
2 with Plaintiff, by consistently obstructing his professional development, by harassing him for
3 making use of his accrued sick leave, by treating him differently from another tenured professor
4 who was allowed to work half-time to accommodate a medical condition, by repeatedly refusing
5 to make reasonable accommodations for his disability, by engaging in retaliatory conduct for
6 Plaintiff's pursuit of grievances and by failing to honor their negotiated settlement agreement
7 related to Plaintiff's earlier discrimination grievance.

8 68. The actions of Defendant CCSN as pled herein went far beyond ordinary breach of
9 contract, and damages available under contract theories would not make Plaintiff whole.

10 69. As a direct and proximate result of Defendants' breach of their implied covenant of
11 good faith and fair dealing, Plaintiff has suffered damages in an amount to be proven at trial
12 hereof.

13 WHEREFORE, Plaintiff, HENRY C. AYOUB, prays that this Court:

14 A. Order Defendants to make Plaintiff whole by providing him with appropriate lost
15 earnings and the cash value of employee benefits of which he has been deprived since his
16 departure from employment, with pre-judgment interest.

17 B. Order Defendants to eradicate the effects of their unlawful employment practices,
18 including but not limited to reinstating Plaintiff to the position which he previously held as a
19 professor and restoring to him all of the privileges and benefits of his employment.

20 C. Order Defendants to make Plaintiff whole by providing compensation for his other
21 pecuniary losses, including but not limited to cost incurred for health and life insurance premiums,
22 and costs of seeking new employment, in amounts to be proven at trial hereof.

23 D. Order that the costs of maintaining this action, including reasonable attorney's fees
24 hereafter incurred, be awarded to Plaintiff.

25 E. Order such other and further relief as this Court may deem just and proper.

26 ...

27 ...

28 ...

JURY TRIAL DEMAND

Plaintiff requests a jury trial on all questions of fact raised by this Complaint.

Dated this 10TH day of April, 2000.

Dr Henry C. Ayoub DCH
Dr. Henry C. Ayoub, DCH
1537 Tonada Way
Las Vegas, NV 89117
(702) 233-4200
Plaintiff in Proper Person